

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.8788 OF 2004

DATED 24th AUGUST, 2006

BETWEEN

Smt Rafiz Nausheed and others.

... Petitioners

and

The Mandal Revenue Officer, Bandlaguda, Hyderabad and others.

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.8788 OF 2004

ORDER:

There are thirty one (31) petitioners in this writ petition. All of them occupied small extents of land in survey No.266/1 situated at Bandlaguda village and Mandal. They also constructed semi-permanent residential houses. When they approached for assignment of house site under their occupation, the Government allegedly issued D-Form pattas in 1995. Some of the petitioners constructed such houses after allotment of house site. They alleged that the fifth respondent, namely, Regional Manager, Andhra Pradesh State Road Transport Corporation (hereafter called, RTC) along with the police trespassed into the land on 29.04.2004, pulled down asbestos sheds and made attempts to dispossess the petitioners, claiming that the land in survey No.266/1 was allotted to RTC. However, due to intervention of the local people and Member of Legislative Assembly, RTC was unsuccessful in evicting the petitioners. Therefore, the present writ petition is filed seeking a writ of Mandamus directing the respondents not to interfere with the peaceful possession and enjoyment of the petitioners' houses bearing No.19-4-1/86/B etc., situated at Bandlaguda village.

This Court, while admitting the writ petition, on 05.05.2004 passed interim order directing the respondents not to evict the petitioners from their respective houses bearing No.19-4-1/86/B etc., situated at Bandlaguda. Respondents 1 to 4 (Revenue Officials) filed W.V.M.P.No.997 of 2005 for vacating the interim order, which was listed on 17.08.2006. The matter was heard finally and is being disposed of at the interlocutory stage with the consent of the learned Counsel for opposite parties.

In the counter affidavit filed on behalf of the respondents 1 to 4, the Mandal Revenue Officer, Bandlaguda Mandal (MRO), stated as follows. One Asadulla Khan, General Power of Attorney (GPA) holder of Nawab Mir Barkat Ali Khan Bhahadur, filed a declaration under

Section 6(1) of Urban Land (Ceiling and Regulation) Act, 1976 (ULC Act, for brevity). An extent of 8,37,077.80 square meters of land in survey No.266/1 in T.S.No.8, Block-F, Ward No.26 of Bandlaguda village and Mandal (correlated to Falaknuma Palace), was declared to be the surplus holding of the declarant. Notification was issued vesting the land in the Government with effect from 28.02.1983. The land was taken possession by the ULC Authorities on 15.04.1983 itself. The surplus land was allotted to the Director General of Police for construction of police complex and offices of the police department, vide orders of the Government in G.O.Ms.No.1213, dated 03.09.1983. Possession was also handed over to the Inspector of Police, Shamshergunj, Hyderabad. An extent of Acs.6.17 guntas from out of the ceiling surplus land was handed over to RTC for construction of Charminar bus depot by the police authorities, as per the orders of the Government. D-form patta certificates were issued to the petitioners in 1996, as all of them encroached upon the Government land and constructed residential houses, duly regularizing the possession in accordance with the orders of the Government in G.O.Ms.No.508, dated 20.10.1995. The land in which house site pattas were issued to the petitioners in survey No.266/1 is situated far away from the land allotted to RTC. The petitioners are not in possession of the land, which is allotted to RTC.

The Law Officer of RTC filed a separate counter affidavit on behalf of respondents 5 and 6. It is alleged that petitioners never constructed any houses on the land with or without sanction. The allegation that the fifth respondent pulled down asbestos sheds on 29.04.2004 is denied. The allegation that the fifth respondent again appeared on 02.05.2004 and trespassed into the petitioners' property is also denied. It is the case of the RTC that the Government of Andhra Pradesh allotted an extent of Acs.6.17 guntas to RTC by their orders in G.O.Ms.No.1213, dated 03.09.1983 in survey No.266/1 for construction of bus station. Initially this land was allotted to police department, which was

re-allotted to RTC. The RTC has taken over only the vacant land and at the time of taking over possession, there were no houses or any construction on the land allotted to RTC. It is also asserted that the land is in possession of RTC. It is further stated that the local M.L.A., Charminar Constituency, gave representation on 17.12.2003 complaining about the construction of bus station in the land, which was allotted to poor persons by way of D-form pattas. Therefore, the Executive Engineer approached the MRO on 28.01.2004 for clarification as to any pattas are granted to any persons in the land allotted to RTC. The petitioners have not constructed any houses in

the land and even if pattas are granted, they are subject to the orders in G.O.Ms.No.508, dated 20.10.1995. As the petitioners are claiming title to the land allegedly in their possession, this writ petition is not maintainable.

Learned counsel for the petitioners submits that all the petitioners were granted pattas and got the benefit of regularisation under G.O.Ms.No.508 in 1996, and therefore, the petitioners can neither be dispossessed nor their houses be demolished without due process of law, without cancelling the D-form pattas granted to them. Learned counsel asserts that RTC is behind the revenue officials and police officials for causing hardship to the petitioners by removing the asbestos roof sheds constructed by them. Such an action without issuing a notice and without eviction of the petitioners under A.P.Land Encroachment Act, 1950, is unconstitutional.

Learned Assistant Government Pleader for Revenue (Assignment) and the learned standing counsel for RTC opposed the writ petition. They vehemently contend that the land in survey No.266/1 admeasuring Acs.6.17 guntas is in possession of RTC and the bus station is already operating in an extent of Acs.1.20 guntas except pockets of human habitation, there are no structures or houses on the land allotted to the petitioners. Both the counsel for opposite parties also contend that the land allotted to the RTC is different from the land claimed by the petitioners and that the land of RTC is far away from the petitioners' lands.

In the background of the case and the rival contentions, two questions would crop up for consideration. First, whether the petitioners were granted D-form pattas on which they raised temporary houses or their occupation of Government lands was regularised? Secondly, whether there was any interference with the possession of the petitioners?

It is the case of the petitioners that the Revenue Divisional Officer (RDO) assigned land admeasuring 60 square yards to each of the petitioners by orders passed in file bearing No.F/1985/95. They also allege that the plot number allotted to them is with No.19-4-1/86/B etc., as if what was allotted to them is a house with municipal number and not a plot. In the counter affidavit filed by the MRO, this aspect of the matter is adverted to in the following manner.

In reply to paras 2,3,4 and 5 it is submitted that it is a fact that D-form House-Site patta certificates were issued by the Revenue Divisional Officer, Hyderabad Division in file No.F/1985/95 in Sy.No.266/1 of Bandlaguda Village, to the petitioners along with several others in 1996. The total number of Patta Certificates issued in Sy.No.266/1 is (850) situated in Fathima Nagar and Farooq Nagar. The said

certificates were issued in the year 1996 to all the illegal encroachers who constructed residential structures by regularizing under G.O.Ms.No.508 Revenue (Assn.-I) department, dated 20.10.1995. As per the said G.O. only Government Lands with structures can be considered for regularisation and issue of House Site Pattas free of cost which is not transferable or alienable.

The D-form pattas granted by the RDO to the petitioners are filed as material documents. The D-form patta granted to the first petitioner would show that she was assigned land admeasuring 60 square yards in survey No.266/1 bearing No.19-4-1/86/B. The same is the case with regard to the D-form pattas allotted to the other petitioners. A perusal of D-form patta along with the above counter averments would lead to two inferences. First, by the time the RDO gave D-form pattas, there was already a constructed house and secondly, even as per the admission made in the counter affidavit of MRO, the said certificate was issued regularising the land with structures in the occupation of the petitioners as per the orders of the Government in G.O.Ms.No.508, dated 20.10.1995. It is therefore reasonable to infer that even by 1996, there were houses constructed by the petitioners, which were regularised under the relevant Government orders.

Whether the allegation that the fifth respondent highhandedly removed the houses and tried to trespass into the land of the petitioners? It is the case of the petitioners that the fifth respondent trespassed into the property on 29.04.2004 and forcibly pulled down asbestos sheds and that on 02.05.2004 the fifth respondent trespassed into the property and tried to interfere the petitioners from possession. In the counter affidavit filed by the MRO, this allegation is denied in the following manner.

In reply to paras 6,7,8 and 9 it is submitted that the very fact as stated in the para supra that the Government Land which is under the possession of the APSRTC is still vacant on ground, the allegations of the petitioners that the 5th, 6th, 7th respondents have removed the structures and trespassed is concocted and fabricated with a malafide intention to usurp the vacant valuable Government Land which is allotted to the respondent No.7 who in turn allotted certain extent to the 6th respondent. The said land is being developed by the APSRTC authorities for the convenience of the public and for preventing pollution to the age-old monument i.e. The "Charminar", hence the allegations are untrue and baseless.

A reply affidavit is filed by the seventh petitioner on behalf of the

petitioners. The averment in para 7 of the counter affidavit is not specifically denied. Therefore, this Court is not able to accept that the allegation made by the petitioners that fifth respondent highhandedly tried to trespass into the land or remove the asbestos sheds. Nonetheless, the MRO as well as RTC have admitted that the land allotted to RTC is altogether different from the land in respect of which regularisation orders/D-form pattas were issued in favour of petitioners. Therefore, this Court is of considered opinion that it is a matter for thorough enquiry by the revenue officials if necessary by conducting minute survey and enumerating all the houses in survey No.266/1, which is said to contain large extent of area, and then, if the pattas are to be cancelled, the petitioners have to be issued notices. Till then, if the petitioners are in possession as on today, no coercive steps shall be taken by the respondents. These observations should sub-serve the interest of justice.

The writ petition is accordingly disposed of. No costs.

(V.V.S.RAO,J)

24.08.2006.
pln